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Public Safety

**SB 1173 (Caballero)
Oppose**

Vote requirement: 21
Version Date: 03/23/2026

Summary

Provides that, in a criminal case, the judge is required to permit the jury (or judge in a bench trial) to consider convicting the defendant of uncharged lesser-related offenses that were not charged by the prosecution on the request of the defendant if: (1) the defendant relies on a theory of defense that is consistent with a conviction for the lesser offense; (2) the evidence is relevant to and admitted for the purpose of establishing whether the defendant is guilty of the charged offense; and (3) a basis exists on which the jury could find the offense to be less than that charged. Requires the judge to offer juries the option of convicting the defendant of a less serious, related charge.

Vote History

Senate Public Safety: 5-1 (04/14/2026)
(NO: Seyarto)

Support & Opposition Received

Support: California Attorneys For Criminal Justice; California Public Defenders Association; Californians For Safety And Justice; Communities United For Restorative Youth Justice; Drug Policy Alliance; Ella Baker Center For Human Rights; Silicon Valley De-Bug; Smart Justice California; The W. Haywood Burns Institute.

Opposition: California District Attorneys Association.

Arguments in Support

1) According to the author, "In 1998, the California Supreme Court ruled in *People v. Birks*, that there is neither a statutory or constitutional right to have a lesser related

offense presented to a jury. This decision reversed the longstanding ability of a defense attorney to request that the jury consider a lesser charge, if the facts presented at trial supported the elements of the lesser offense, but it did foreclose the possibility of restoration, but noted there is no statutory authority. Currently, jury deliberations are limited to the charges brought by the prosecution, even when the evidence supports a different, lesser offense. At the height of the war on crime era, the Birks Court reduced judicial discretion to allow for lesser charges to be considered, and narrowed a defendant's ability to ask for lesser related crimes to be heard. SB 1173 restores balance in the criminal courtroom. It allows a judge to include a lesser-related offense in jury instructions if the evidence supports it. This reform strengthens due process, supports fair outcomes, ensures that juries can consider the facts before them, and helps juries connect the evidence with the appropriate offense .”

2) Under existing law, when there is reasonable doubt about whether the prosecution proved a defendant's guilt on the offense charged at trial, but the evidence is overwhelming that the defendant is guilty of committing one or more lesser-related offenses, jurors are not given the option of finding the defendant guilty on any of these lesser offenses. Instead, jurors are forced into the all-or-nothing prospect of either finding the defendant guilty of the charged crime – despite their reasonable doubt – or acquitting the defendant entirely. Restoring a defendant's right to lesser-related offenses will increase the accuracy of jury verdicts and help to ensure that defendants are not convicted of more serious crimes when a lesser-related offense better fits the facts established at trial.

Arguments in Opposition

1) According to the California District Attorneys Association (CDA), “This bill would go backwards in our approach to criminal law. It also would run afoul of the California Supreme Court's clear language noting a serious constitutional concern. This same bill, introduced four years ago (AB 2435 (Lee), 2021-2022 Sess.), failed to pass the Assembly for the same reasons it is bad policy today. The bill proposes an outdated, unconstitutional, and unworkable rule requiring courts to instruct juries on lesser related offenses.”

“In 1998, the California Supreme Court specifically ruled that courts shall not instruct on lesser related offenses, holding that prior opinions authorizing such a practice were simply ‘wrong.’ (*People v. Birks* (1998) 19 Cal.4th 108, 136.) This has been the law of the land in California for nearly 30 years. SB 1173 states that the intent of the bill is to restore this ‘wrong’ practice. The best argument against this bill can be found in the Supreme Court's own language in the *Birks* opinion: ‘*Geiger*’s rationale has since been expressly repudiated for federal purposes by the United States Supreme Court, and it continues to find little support in other jurisdictions. The *Geiger* rule can be unfair to the prosecution, and actually promotes inaccurate factfinding, because it gives the defendant a superior trial right to seek and obtain conviction for a lesser uncharged offense whose elements the prosecution has neither pled nor sought to prove.

Moreover, serious questions arise whether the holding of *Geiger*, ostensibly based on the due process clause of the California Constitution, can be reconciled with other provisions of the same charter. By according the defendant the power to insist, over the prosecution's objection, that an uncharged, non-included offense be placed before the jury, the *Geiger* rule may usurp the prosecution's exclusive charging discretion, and may therefore violate the Constitution's separation of powers clause."

2) Due to a court ruling (see *People v. Geiger* (1984) 35 Cal.3d 510 in background) between 1984 and 1998 (four years which is not really that "longstanding" as implied by the proponents) a defendant was entitled to have the jury instructed on lesser-related offenses if the defendant requested it. A defendant might choose this path because conviction of a lesser offense would necessarily cause the dismissal of the greater offense. However, in 1998, this case was overturned by the California Supreme Court because it granted greater rights to the defendant than accorded to the prosecution and that, were this allowed, there were potential serious constitutional issues in allowing the court and defense to determine criminal charges, one of the main functions of the prosecution. Given that ruling by the CA Supreme Court, it is unclear why we would want to reimplement a 4-year repudiated policy that was determined to specifically disadvantage the prosecution (representing the people of the state) in criminal proceedings. The prosecution's duty under the law and constitution is clear, they are supposed to initiate and conduct on behalf of the people all prosecutions for public offenses. DA's choose charges based upon what elements of a crime they believe they can prove to a jury. If that standard cannot be met then the individual will be found not guilty. It sounds absurd when put in simple terms but basically this bill is asking the state to adopt a system where a defendant gets to choose which charges/crimes the jury considers in their criminal case.

Digest

Provides that a jury, or a judge if a jury trial is waived, upon request of a defendant, may find the defendant guilty of a lesser offense, the commission of which is closely related to the offense with which the defendant is charged, if the court determines that all of the following conditions are met:

- (1) The defendant relies on a theory of defense that is consistent with a conviction for the lesser offense.
- (2) The evidence of the lesser offense is relevant to and admitted for the purpose of establishing whether the defendant is guilty of the charged offense.
- (3) A basis exists, other than an unexplainable rejection of prosecution evidence, on which the jury could find the offense to be less than that charged.

States the intent of the Legislature to restore the right of a defendant to receive jury instructions on lesser related offenses as originally guaranteed by the California Supreme Court in *People v. Geiger* (1984) 35 Cal.3d 510.

Background

Existing law related to this measure:

Existing law provides that the district attorney is the public prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses. (Government Code § 26500)

Existing law provides that the jury, or the judge if a jury trial is waived, may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense. (Penal Code § 1159)

Related Case Law:

In *People v. Geiger* (1984) 35 Cal.3d 510, the California Supreme Court held that considerations of fundamental fairness entitle a defendant to instructions on a lesser crime related to the crime charged, even though it was not a lesser included offense to that crime. To be entitled to the instruction, the defendant would have had to establish: (1) Some evidence on the basis of which the jury could find the lesser offense; (2) that the offense was closely related to the charged offense and shown by the evidence; and (3) that the defendant's theory of defense was consistent with conviction of the related offense.

In *People v. Birks* (1998) 19 Cal.4th 108, the Supreme Court overruled *Geiger*. It held that this rule presents constitutional and policy concerns. The prosecution has the power to decide what crimes the defendant will be charged with. Federal case law had undermined the doctrine as a matter of federal constitutional law. It is unfair to the prosecution because the charging document gives the prosecution fair notice of what elements of the crime it is required to prove and what facts need to be marshaled to substantiate those charges. The court found that there are no clear standards for determining what is a lesser offense. It also held that the *Geiger* rule raised constitutional separation of powers concerns on whether the court, over the objection of the prosecutor, has the power to determine what crimes the defendant will be charged with.

The lesser related offenses rule described above is in contrast to the similar concept of a "lesser included" offense. A defendant charged with a crime may be convicted of a lesser included crime. The failure of a judge to instruct the jury on a lesser included crime is prejudicial error and can overturn a conviction. This is determined either by considering the elements of the crime (i.e., a lesser included offense would be one which includes all of the elements of a greater crime but where one or more is missing) or by considering the accusatory pleading (i.e., if all of the facts actually alleged in the accusatory pleading include all of the elements of the lesser offense, such that the greater offense cannot be committed without also committing the lesser offense). 5 Witkin, California Law and Criminal Procedure § 709. An example includes first-degree murder and second-degree murder. You cannot commit first-degree murder without committing second-degree murder, but second-degree murder is less serious.

Related Legislation

AB 2435 (Lee, 2022) was nearly identical to this measure. It failed passage on the Assembly Floor 35-30 (NO: Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Nguyen, Patterson, Seyarto, Valladares, Voepel, Waldron).